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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

IN RE: CATHODE RAY TUBE (CRT)
ANTITRUST LITIGATION

Master File No. 3:07-md-05944-sc (N.D. Cal)
MDL No. 1917

This Document Related to:

Individual Case No. 3:13-cv-2171 (SC),
*Dell Inc.; Dell Products L.P., v. Philips
Electronics North America Corporation et al.;*

Individual Case No. 3:13-cv-01173-SC,
*Sharp Electronics Corp., et al. v. Hitachi, Ltd.,
et al.*

Individual Case No. 3:13-cv-2776 SC,
*Sharp Electronics Corp. et al. v. Koninklijke
Philips Elecs., N.V. et al.*

**DEFENDANTS' JOINT NOTICE OF
MOTION AND MOTION FOR PARTIAL
SUMMARY JUDGMENT AGAINST
DELL AND SHARP PLAINTIFFS ON
STATUTE OF LIMITATIONS GROUNDS
AND MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT THEREOF
- Redacted**

[Declaration of Claire Yan ISO Defendants'
Joint Motion for Partial Summary Judgment
and [Proposed] Order filed concurrently
herewith]

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NOTICE OF MOTION AND
JOINT MOTION FOR PARTIAL SUMMARY JUDGMENT

TO THE COURT, ALL PARTIES, AND THEIR COUNSEL OF RECORD:

PLEASE TAKE NOTICE that on February 6, 2015 at 10:00 a.m., or as soon as counsel may be heard thereafter, in Courtroom 1, 17th Floor, San Francisco, California before the Honorable Samuel Conti, the undersigned defendants will move the Court, pursuant to Rule 56 of the Federal Rule of Civil Procedure, for partial summary judgment.

For the reasons explained in the accompanying Memorandum of Points and Authorities, the undersigned defendants hereby move the Court to dismiss claims under the Sherman Act by Plaintiffs Dell Inc., Dell Products L.P. (collectively “Dell”) and Sharp Electronics Corporation and Sharp Electronics Manufacturing Company of America, Inc. (collectively “Sharp”) relating to conduct occurring before November 27, 2003 because such claims are barred by the statute of limitations under 15 U.S.C. § 15b and established case law.

This motion is based on this Notice of Motion, the following Memorandum of Points and Authorities, the Declaration of Claire Yan (“Yan Decl.”), and any materials attached thereto or otherwise found in the record, along with the argument of counsel and such other matters as the Court may consider.

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **ISSUES PRESENTED**

3 1. Whether, where the record shows that Dell was aware of the facts underlying its
4 claims as early as 1998, or at least was aware of facts that should have excited its suspicions, its
5 claims under the Sherman Act relating to conduct occurring before November 27, 2003 are barred
6 by the applicable four-year statute of limitations.

7 2. Whether, where the record shows that Sharp was aware of the facts underlying its
8 claims as early as 2002, or at least was aware of facts that should have excited its suspicions and
9 failed to exercise any diligence in investigating those facts, its claims under the Sherman Act
10 relating to conduct occurring before November 27, 2003 are barred by the applicable four-year
11 statute of limitations.

12 **SUMMARY OF ARGUMENT**

13 Dell and Sharp first filed their complaints in this action in February and March, 2013,
14 respectively. Dell and Sharp allege that Defendants were members of a “cartel” that engaged in a
15 “conspiracy” to fix the prices of cathode ray tubes (“CRTs”), in part by exchanging competitively
16 sensitive information. Relying on the doctrine of fraudulent concealment, among other theories of
17 tolling¹, Dell and Sharp seek damages as far back as 1996, asserting that they had neither actual
18 nor constructive knowledge of their claims until November 27, 2007.² However, the undisputed
19

20 ¹ Dell and Sharp also assert that their claims were tolled due to government proceedings and the
21 filing of direct purchaser class action complaints in November 2007. For purposes of this motion,
22 Defendants assume that the claims were tolled beginning on November 27, 2007 without
23 conceding that Dell and Sharp can properly invoke tolling under *American Pipe* or on some other
24 basis beginning on that date. *See Am. Pipe & Constr. Co. v. Utah*, 414 U.S. 538 (1974). Any
25 tolling based on government proceedings would not apply to any claims prior to November 2007.
26 *See* 15 U.S.C. § 16(i). Plaintiffs allege that government investigations into the CRT industry only
27 began around November 8, 2007 and the first indictment was not announced until February 2009.
28 Dell First Am. Compl. ¶¶ 8, 28, 162; Sharp Second Am. Compl. ¶¶ 9, 126, 134.

² Dell and Sharp contend that their claims under the federal antitrust laws were tolled by the filing
of direct purchaser class action complaints. The earliest of these complaints were filed on
November 27, 2007. *See, e.g., Crago, Inc. v. Chunghwa Picture Tubes, Ltd., et al.*, No. 3:07-cv-
05944-SC (Dkt. No. 1) (N.D. Cal. Nov. 27, 2007); *Nathan Muchnick, Inc. v. Chunghwa Picture
Tubes Ltd. et al.*, No. 3:07-cv-05981-SC (Dkt. No. 1) (N.D. Cal. Nov. 27, 2007).

1 record shows that over a decade ago, well outside the four year statute of limitations period of the
2 Sherman Act and the Clayton Act, Dell and Sharp both knew of, or strongly suspected, that
3 Defendants were engaged in the exact same conduct that Dell and Sharp now offer as evidence
4 that Defendants violated the Sherman Act. Allegations of fraudulent concealment, even if
5 meritorious, cannot continue to toll the statute of limitations once the plaintiff has actual or
6 constructive knowledge of facts giving rise to its claim (especially where the plaintiff has
7 knowledge of the very facts it now specifically identifies as support for its claim). As a result,
8 Dell's and Sharp's claims relating to conduct occurring before November 27, 2003, i.e., four years
9 before the direct purchaser class action complaints were filed, are time-barred, and neither can
10 recover any damages that accrued prior to that date.

11 The undisputed evidence shows that throughout the time period from 1998 to 2003 Dell
12 was fully aware of facts that, at a minimum, should have excited its suspicions and led it to
13 discover the causes of action that it now alleges. [REDACTED]

14 [REDACTED]
15 [REDACTED]
16 [REDACTED]
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18 [REDACTED]
19 [REDACTED]
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21 [REDACTED]
22 [REDACTED] Dell's allegation

23 that it did not and could have not discovered the facts underlying the alleged conspiracy until
24 November 2007 is wholly unsupported by any evidence or reasonable inference from the
25 undisputed record. As such, Dell's damages that accrued before November 27, 2003 are barred by
26 the statute of limitations and Dell is barred from seeking such damages as a matter of law.

27 Likewise, Sharp was aware over a decade ago of some of the very facts and types of
28 documents that it now uses to support its Sherman Act claims. [REDACTED]

As such, Sharp's damages that accrued before November 27, 2003 are time-barred and Sharp is barred from seeking such damages as a matter of law.

I. STATEMENT OF UNDISPUTED AND MATERIAL FACTS

A. Dell's Claims and Fraudulent Concealment Allegations

Dell filed its complaint in this case on February 17, 2013. *See* Dell Complaint, Case No. 13-cv-2171-SC, Dkt. No. 1 (Feb. 17, 2013). It asserts claims for directly purchased CRT products under Section 1 of the Sherman Act and the Clayton Act. *See* Dell First Amended Complaint ("Dell First Am. Compl."), Dkt. No. 1726 (June 10, 2013) ¶¶ 10, 197-198, 219-227. Dell alleges the existence of a "price-fixing conspiracy from as early as March 1, 1995, thorough at least November 25, 2007" whose purpose "was to fix, raise, stabilize, and maintain prices for cathode ray tubes ('CRTs') and thereby artificially inflate the prices of products that contained CRTs." *Id.* ¶ 1. Dell alleges that its claims are "tolled by the filing of various class action lawsuits shortly after the conspiracy was made public in November 2007." *Id.* ¶ 218.

Dell alleges that any applicable statute of limitations was tolled "[a]s a result of Defendants' and their co-conspirators' fraudulent concealment of their conspiracy." *Id.* ¶ 217. Specifically, Dell alleges that it had "neither actual nor constructive knowledge of the facts constituting its claim for relief before November 2007." *Id.* ¶ 199. Dell alleges that it "did not discover, and could not have discovered through the exercise of reasonable diligence, the existence of the conspiracy alleged herein until November 2007, when the government investigations described [in the complaint] became public." *Id.* Finally, Dell alleges that

1 “Defendants and their co-conspirators engaged in a secret conspiracy that did not give rise to facts
2 that would put Dell on inquiry notice that there was a conspiracy to fix prices for CRTs.” *Id.*

3 **B. Sharp’s Claims and Fraudulent Concealment Allegations**

4 Sharp filed its complaint in this case on March 15, 2013, which named most of the current
5 defendants. *See* Sharp Complaint, Case No. 13-cv-1173-EDL, Dkt. No. 1.³ Sharp asserts claims
6 for directly purchased CRT products under Section 1 of the Sherman Act and the Clayton Act.⁴
7 Sharp Second Am. Compl. (“Sharp MDL Compl.”) ¶¶ 11-12; Sharp Philips Compl. ¶ 11, 12. In
8 the first paragraph of Sharp’s complaint, Sharp states that “Sharp brings this action to recover
9 damages on account of the antitrust injuries it incurred as a result of a long-running conspiracy by
10 suppliers of cathode ray tubes (‘CRTs’) to coordinate and fix the prices of CRTs and exchange
11 detailed competitive information.” Sharp MDL Compl. ¶ 1; *see also* Sharp Philips Compl. ¶ 1
12 (same). Sharp alleges that the conspiracy “extend[ed] at a minimum from at least March 1, 1995,
13 through at least December 2007.” Sharp MDL Compl. ¶ 2; Sharp Philips Compl. ¶ 2 (same).
14 Sharp alleges that its claims were “tolled by the filing of various class action lawsuits shortly after
15 the conspiracy was made public in November 2007.” Sharp MDL Compl. ¶ 247; Sharp Philips
16 Compl. ¶ 234.

17 Sharp alleges that “[a]s a result of Defendants’ fraudulent concealment of their conspiracy,
18 the running of any statute of limitations has been tolled with respect to any claims that Plaintiffs
19 have as a result of the anticompetitive conduct” alleged in the complaint. Sharp MDL Compl. ¶
20 246; Sharp Philips Compl. ¶ 247. Specifically, Sharp alleges that it had “neither actual nor
21 constructive knowledge of the facts constituting [its] claim for relief before November 2007.”
22 Sharp MDL Compl. ¶ 230; *see also* Sharp Philips Compl. ¶ 236. Sharp further alleges that it “did
23 not discover, and could not have discovered through the exercise of reasonable diligence, the

24 ³ In addition to this initial complaint, Sharp filed a second complaint that included various Philips
25 defendants and Orion Engineering & Services. *See* Case No. 13-cv-2776-MEJ, Dkt. No. 1 (the
26 “Sharp Philips Compl.”).

27 ⁴ On October 14, 2014, Sharp informed Defendants that it does not intend to pursue and was
28 withdrawing the claims for indirectly purchased CRT products as well as state claims alleged in its
Second Amended Complaint. *See* Benson Letter, dated October 14, 2014 re: Withdrawal of
Claims Relating to Finished Product Purchases.

1 existence of the conspiracy alleged herein until November 2007, when the government
2 investigations described [in the complaint] became public.” Sharp MDL Compl. ¶ 230; *cf.* Sharp
3 Philips Compl. ¶ 239. Finally, Sharp alleges that “Defendants and their co-conspirators engaged
4 in a secret conspiracy that did not give rise to facts that would put Plaintiffs on inquiry notice that
5 there was a conspiracy to fix prices of CRTs.” Sharp MDL Compl. ¶ 230; Sharp Philips Compl. ¶
6 236.

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A. Summary Judgment Standard

“Where the issue is raised on motion for summary judgment, plaintiff must produce facts sufficient to raise a genuine issue concerning his lack of knowledge or exercise of diligence to defeat the motion.” *Falstaff*, 1979 WL 1665, at *1. Summary judgment must be granted if “there is no genuine issue as to any material fact and the movant is entitled to judgment as a matter of

1 law.” Fed. R. Civ. P. 56(a). Where the non-moving party bears the burden of proof, the moving
 2 party need only show that the non-moving party lacks evidence sufficient to create an issue of
 3 material fact. *Celotex Corp. v. Catrett*, 477 U.S. 317, 325 (1986). Thus, Dell and Sharp must “do
 4 more than simply show that there is some metaphysical doubt as to the material facts” to defeat
 5 summary judgment. *Matsushita Elec. Indus. Co., Ltd. v. Zenith Radio Corp.*, 475 U.S. 574, 586
 6 (1986). “The mere existence of a scintilla of evidence...[is] insufficient; there must be evidence on
 7 which the jury could reasonably find for [Dell or Sharp].” *Anderson v. Liberty Lobby, Inc.*, 477
 8 U.S. 242, 252 (1986).

9 **B. The Doctrine Of Fraudulent Concealment Tolling Does Not Apply If Plaintiffs**
 10 **Had Actual Knowledge Of The Facts Giving Rise To The Claim Or Facts That**
Should Have Excited Their Suspicions

11 The Sherman Act and Clayton Act provide for a four-year statute of limitations. 15 U.S.C.
 12 § 15b. Thus, actions must be commenced within four years from the date when the causes of
 13 action accrue. *Hexcel*, 681 F.3d at 1059. Dell filed its complaint on February 17, 2013 and Sharp
 14 filed its complaint on March 15, 2013. Both Dell and Sharp allege that their claims are tolled by
 15 the filing of various class action law suits shortly after government investigations were made
 16 public in November 2007. Dell First Am. Compl. ¶ 218; Sharp Second Am. Compl. ¶ 247.
 17 Assuming that their claims were tolled beginning on November 27, 2007, Dell and Sharp are
 18 limited only to damages arising after November 27, 2003, unless each can prove that its claims
 19 relating to conduct prior to November 2003 were tolled by Defendants’ alleged fraudulent
 20 concealment. *See supra* Sections I.A, I.B.

21 “If a defendant proves that the plaintiff had actual or constructive knowledge of the facts
 22 giving rise to the claim, the doctrine of fraudulent concealment does not apply.” *Hexcel Corp.*,
 23 681 F.3d at 1060. Dell and Sharp have the burden of proving that they “had neither actual nor
 24 constructive knowledge of the facts constituting [their] claim for relief.” *Rutledge*, 576 F.2d at
 25 249-50; *see also Volk v. D.A. Davidson & Co.*, 816 F.2d 1406, 1415 (9th Cir. 1987). In this case,
 26 it is plain that Dell and Sharp cannot meet their burden to establish tolling under a theory of
 27 fraudulent concealment.

1 “Any fact that should excite [Dell’s and Sharp’s] suspicion is the same as actual
 2 knowledge of [their] entire claim.” *Conmar Corp. vs. Mitsui & Co.*, 858 F.2d 499, 502 (9th Cir.
 3 1988) (quoting *Dayco Corp. v. Goodyear Tire & Rubber Co.*, 523 F.2d 389, 394 (6th Cir.1975)).
 4 It is enough if Dell or Sharp should have been alerted to facts that, following duly diligent inquiry,
 5 could have advised it of its claim. *Conmar*, 858 F.2d at 502. There is no requirement that a
 6 plaintiff be aware of all the facts that would establish its claim. *See Advanced Micro Devices, Inc.*
 7 *v. Intel Corp.*, No. C-91-20541 JW, 1992 U.S. Dist. LEXIS 21529, at *5-6 (N.D. Cal. July 24,
 8 1992); *GO Computer, Inc. v. Microsoft Corp.*, 508 F.3d 170, 178 (4th Cir. 2007) (“Full knowledge
 9 often awaits discovery, and the very notion of ‘inquiry notice’ implies something less than that”);
 10 *Falstaff*, 1979 WL 1665, at *2 (“Plaintiff need not have knowledge of the full extent of the
 11 defendant’s actions nor must he have knowledge of all the evidentiary details before tolling
 12 ceases.”).

13 In this case, summary judgment is appropriate because uncontroverted evidence shows that
 14 Dell and Sharp “discovered or should have discovered [their] cause of action but failed to file a
 15 timely complaint.” *Advanced Micro Devices*, 1992 U.S. Dist. LEXIS 21529, at *2; *Volk*, 816 F.2d
 16 at 1417.

17 **C. Dell’s Claims For Conduct Prior To November 2003 Are Time Barred**
 18 **Because Dell Had Actual Knowledge Of What It Characterized As A CRT**
Cartel And Ample Facts That Should Have Excited Its Suspicions

19 **1. Dell Had Actual Knowledge Of What It Characterized As A CRT**
Cartel Far Outside The Statute Of Limitations Period

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20 **2. At A Minimum, Dell Had Sufficient Information To Excite Its**
21 **Suspicious About Collusion Among CRT Suppliers Prior To The**
22 **Statute Of Limitations Period**

22 Dell will likely now try to present conclusory and self-serving denials that its employees
23 had any knowledge or suspicion of collusion or conspiracy; however, no jury could reasonably
24 conclude as such on the basis of the evidence. *See Hexcel Corp.*, 681 F.3d at 1063 (“Conclusory,
25 self-serving affidavits, lacking detailed facts and any supporting evidence, are insufficient to
26 create a genuine issue of material fact.”) (internal quotation marks omitted). Moreover, even if the
27 record left any triable issue as to Dell’s *actual* knowledge, and it does not, at a minimum, [REDACTED]
28

1 [REDACTED]
2 [REDACTED]
3 Courts have granted summary judgment where the record shows sufficient facts to have
4 put the plaintiff on “inquiry notice” of its claims. *See, e.g., Rutledge*, 576 F.2d at 250; *Volk*, 816
5 F.2d at 1416 (finding constructive knowledge where plaintiffs received corporate annual report
6 containing facts underlying their claims); *GO Computer, Inc.*, 508 F.3d at 178-179 (finding
7 inquiry notice where a number of red flags amounted to a profusion of information sufficient to
8 spur a reasonably diligent person to investigate an antitrust claim). For example, in *Advanced*
9 *Micro Devices*, the court granted partial summary judgment on the plaintiff’s claims alleging
10 monopolistic conduct by the defendant. 1992 U.S. Dist. LEXIS 21529, at *1. The court
11 concluded that the plaintiff failed to establish tolling under a theory of fraudulent concealment
12 because the plaintiff “did not produce facts sufficient to raise a genuine issue concerning its
13 knowledge of [the] alleged antitrust claims.” *Id.* at *2. The court made this finding based on
14 plaintiff’s documents dating outside the statute of limitations period, including an internal
15 memorandum and a product planning report. *Id.* at *3. In these documents, the plaintiff “note[d]
16 its concern regarding [the defendant’s] conduct and attempts to attain market dominance and
17 exclude [plaintiff].” *Id.* The court held that plaintiff’s statements about defendant’s intention to
18 preclude plaintiff from the market “demonstrate[s] an awareness sufficient to excite inquiry into
19 potential antitrust claims.” *Id.* Other statements indicated that prior to the limitations period,
20 plaintiff was “suspicious” of defendant’s conduct. Based on this evidence, the court held that
21 plaintiff was on “inquiry notice” of the potential antitrust claims prior to the running of the
22 limitations period. *Id.*

23 What puts Dell “so plainly on inquiry notice is the multiplicity and specificity of the
24 information” it had. *See GO Computer Inc.*, 508 F.3d at 179. [REDACTED]
25 [REDACTED]
26 [REDACTED]
27 [REDACTED]
28 [REDACTED]

1 [REDACTED]
 2 [REDACTED]
 3 [REDACTED] Further, Dell is a sophisticated
 4 actor with extensive experience and knowledge of detecting potential cartel-like behavior or
 5 conspiracies. All in all, “there were enough red flags” to put Dell on notice of its claims. *See*
 6 *Hexcel Corp.*, 681 F.3d at 1063; *GO Computer, Inc.*, 508 F.3d at 172. Faced with the record, a
 7 jury can only reasonably conclude that throughout the period from 1998 to 2003, Dell was aware
 8 of plenty of information to “excite” its suspicions of alleged collusion among CRT suppliers – the
 9 same allegations of collusion it now raises as the basis of its claims.

10 Despite all of the above, Dell failed to take action as to its claims. Dell could have but did
 11 not approach the Department of Justice as to its suspicions of collusion by among CRT
 12 manufacturers. Dell could have but did not file a timely lawsuit based on its knowledge and
 13 suspicion that its business was being affected by the price increases caused by what it
 14 characterized as the CRT cartel. [REDACTED]

15 [REDACTED]
 16 [REDACTED]
 17 [REDACTED] Having had
 18 actual knowledge—or at least ample facts to excite its suspicions—of the alleged collusive
 19 activities, and having done nothing after these claims accrued for five years prior to the filing of
 20 the first direct purchaser class action lawsuits in November 2007, Dell cannot and should not now
 21 be allowed to use the doctrine of fraudulent concealment to stretch the limitations period.

22 **D. Sharp’s Claims For Conduct Prior To November 2003 Are Time Barred**
 23 **Because Sharp Knew Or Should Have Known About A CRT Conspiracy**

24 Sharp’s claims for conduct before November 27, 2007 are also barred by the statute of
 25 limitations, as Sharp had knowledge in 2002 of the very conduct that it now alleges in this
 26 litigation is a violation of the Sherman Act.

27 In its complaints, Sharp alleges a “conspiracy by suppliers of cathode ray tubes” That it
 28 could not have discovered until November 2007. [REDACTED]

1 [REDACTED]
2 [REDACTED]
3 [REDACTED]
4 [REDACTED]
5 [REDACTED]
6 [REDACTED]
7 [REDACTED]
8 [REDACTED]
9 [REDACTED]
10 [REDACTED]
11 [REDACTED]
12 [REDACTED]
13 [REDACTED]
14 [REDACTED] Sharp's knowledge of the alleged "conspiracy" thus
15 predates November 27, 2003, and its claims based on conduct before that date are barred by the
16 statute of limitations.

17 **III. Conclusion**

18 For the foregoing reasons, Defendants respectfully request that the Court enter partial
19 summary judgment in their favor as to Dell's and Sharp's claims under the Sherman Act relating
20 to conduct before November 2003, as barred by the applicable statute of limitations.

21
22 Respectfully submitted: November 7, 2014

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